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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

# CHANGES IN NATIONAL PRACTICES COVERING SHIPPER/OCEAN CARRIER RELATIONS

## Changes in shipper representation

Note by the UNCTAD secretariat

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Information received from shippers' councils of the Philippines, Senegal and Sri Lanka on changes in shipper/carrier relations

## INTRODUCTION

(i) Paragraph C.3 of the work programme of the Standing Committee on Developing Services Sectors: Shipping provides for the Standing Committee to "monitor and report on changes in national practices covering shipper/ocean carrier relations, and changes in shipper requirements regarding the quality and conditions of shipping and port services".

(ii) The present report is prepared in response to the above-mentioned work programme element. In the process of its preparation, the UNCTAD secretariat has sought relevant information from Governments through a note issued on 18 August 1994, through letters addressed to shippers' councils and by making use of publicly available information.

(iii) The information received, which is reflected in this document, indicates that a number of councils are about to apply some of the recommendations contained in the relevant section of the report "Industry and policy developments in world shipping and their impact on developing countries" (TD/B/CN.4/5) submitted to the Standing Committee at its first session. The necessary process of transformation of shippers' councils is, however, in most cases, not concluded. Consequently, a number of basic issues raised in the previous report are reconsidered against new developments in global trade and shipping and updated as appropriate.

(iv) In order to provide the Standing Committee with examples of actual and specific problems faced by shippers and of the way existing institutions are trying to cope with new developments, replies of three councils to the secretariat's request for information are contained in the annex to this report, showing the divergences and similarities in the approaches applied to finding solutions to the transport problems facing the shippers' community.

SUMMARY

(v) The world economy is characterized by a process of globalization of activities affecting both commercial and intergovernmental relations. At the macro level, globalization leads to structural transformation of nations reflected in a large-scale withdrawal of the public sector from economic activities, in increasing tendencies to enter into regional integration groupings and in parallel moves towards multilateral arrangements aimed at progressive liberalization of trade in goods and services. At the micro level, globalization is resulting in more flexible approaches to production and marketing, as well as strengthening of links between companies in the production process.

(vi) Resort to globalized production processes and marketing arrangements has been made possible by policy reforms and, most important, by improvements in transport and communications. Improved service packages offered by shipping and transport companies, coupled with a general decrease in ocean transport costs, have greatly reduced economic distances.

(vii) New production patterns have greatly benefited from the responsiveness of the shipping industry to changing transport requirements of shippers. This, however, could not always be achieved within existing organizational structures, which sometimes proved to be too rigid to accommodate the needs of shippers and the demands imposed by new transport technologies. New opportunities offered by the shipping and transport industry have primarily benefited large shippers. Small- and medium-sized shippers, particularly from developing countries, are often confronted with a wide choice of shipping opportunities which, however, they cannot benefit from effectively due to lack of expertise and information.

(viii) In order to enable shippers from developing countries to cope with a newly emerging transport situation, a certain level of assistance will be required, which should be provided by shippers' councils. In order to enable councils to render such services, it appears necessary that they overcome the public service approach still prevailing in many countries and be transformed into professional, service-oriented organizations.

(ix) A number of shippers' councils have already adapted to the changing needs of the trading community. Depending on stage of development, two different directions can be discerned. Thus, some councils have developed into industry associations who see their primary role as shippers' lobbies *vis-à-vis* Governments and intergovernmental organizations. Other councils, particularly in developing countries, continue to focus their activities on the relationship between buyers and sellers of transport services. However, important changes are also taking place within these councils, as negotiations with conferences on general freight rate levels are no longer priority activities. They rather concentrate on programmes of direct assistance, thus enabling their member shippers to take advantage of opportunities offered by new and improved shipping services.

(x) Many shippers' councils are still struggling to adapt to the necessary changes, both with regard to new functions as well as corresponding organizational structures. In order to successfully transform existing councils, a process of professionalization has to be set in motion, which would include extensive human resource development programmes to enable council staff to provide the assistance needed by shippers.

## Chapter I

## THE IMPACT OF GLOBALIZATION AND RELATED DEVELOPMENTS ON SHIPPERS IN DEVELOPING COUNTRIES

1. Over the last years, production and trading systems have been subjected to considerable changes. These changes are largely reflected in concepts such as "globalization" or at least "regionalization". While these concepts may represent apparently differing approaches, they are designed to meet the same objectives, i.e. increasing efficiency and organizational responsiveness.[1]

2. These broad objectives are equally valid at the macro level, where globalization may lead to structural transformation of nations, as well as on the micro level, i.e. the level of companies, be they industrial production firms or service supplying companies. At the micro level, the changes brought about by globalization are reflected in more flexible approaches to production, as well as an increasing tendency for firms to shed activities not directly linked to their core activities and thus to purchase inputs, be they goods or services, from external subcontractors located anywhere in the world. Similarly, marketing activities are being reoriented to reflect changing consumer behaviour and preferences. This is particularly reflected in the increasing importance of non-price competition. Consumers have greater expectations in terms of quality products, continuous product improvement and innovation with regard to new goods and services.[2]

3. These changes have been brought about by market driven forces. The just-mentioned changes in consumer behaviour have gone hand in hand with increases in the cost of research, development and production, with parallel reductions in product life cycles, thus compelling firms to combine their core activities with those of other companies. In parallel, and to the extent possible, there has been a certain degree of standardization of products. The automobile industry may serve as an example for both these developments. To the extent possible, and bearing in mind different national or regional regulatory requirements, cars are being standardized, even if marketed under different "brand" names. A car may be designed in one part of the world and then assembled in various plants close to different markets from largely standardized components produced all over the world, thus systematically taking advantage of labour-cost and productivity differentials among various countries or regions.

4. These changes have been made possible by policy reforms and, most important, by transport and communications improvements. In terms of policy developments, it may be sufficient for the purposes of this paper to mention two major changes that have facilitated moves towards globalization. The first of these is a stronger orientation towards policies aimed at supporting marketing mechanisms accompanied by a large-scale withdrawal of the state from economic activities. While these policies are, of course, most apparent in the countries in transition, they are by no means limited to them but rather a feature of all countries, be they developing or developed. The second, closely related, policy element is that of market-based regional cooperation leading to new, or an intensification of existing, integration arrangements. Customs unions and free trade agreements work to stimulate cross-border trade and, equally, cross-border corporate integration. Of the agreements entered into, mention may be made, in particular, of NAFTA, the formation of the EEC Single European Market in 1993 and its enlargement by several countries in 1995, and the EEC-EFTA agreement on the establishment of the European Economic Space (EES). New alliances have also

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[1] For a general discussion of the concepts of globalization and regionalization, see, *inter alia*, Dunning, J.H., "Globalization, economic restructuring and development" (UNCTAD/EDM/ERCP/7), Geneva, 1994, and Morrison, A.J. and Roth K., "The regional solution: an alternative to globalization" in Transnational Corporations, vol. 1, No. 2 (August 1992), pp. 37-55, United Nations, New York.

[2] See Dunning, J.H., op. cit., pp. 12-13.

been formed between developing countries in different areas of the world, while existing alliances have received a new impetus. In Latin America, for instance, a recent agreement between member countries of the Andean Pact (Cartagena Agreement) provides for a re-orientation of their economies towards a more competitive and export-oriented system and a greater degree of integration. Similar developments are taking place in Asia and, to a lesser extent, in Africa. A common characteristic of all such developments is a strong commitment to reduced government control or intervention in many fields and the promotion of a liberalization of markets. Consequently, many markets have become increasingly transnational[3] and interdependent. There is likely to be continuing growth of transnational corporations involved in regional or global production and marketing strategies through the ownership and management of geographically dispersed but interdependent assets. This trend towards globalization of production and of markets will no doubt pose enormous challenges for the next decade and will strongly influence production and transportation patterns and requirements.[4]

5. Another prerequisite for the successful introduction of the concept of globalization can be seen in the development of transport technologies and transport organization. Improved service packages offered by shipping and transport companies, coupled with a general reduction particularly in ocean transport costs, have reduced economic distances. It is quite clear that new production patterns have greatly benefited from the responsiveness of the shipping industry to the changing transport requirements of shippers. This responsiveness, however, could not always be achieved within existing organizational structures, which sometimes proved to be too rigid to accommodate the needs of shippers and the demands imposed by new transport technologies.

6. The changing trade and transport environment has greatly affected both providers and users of shipping and transport services. Changes in technology and organization of shipping, particularly of liner shipping, have been discussed in detail in various documents submitted to the Standing Committee on Developing Services Sectors: Shipping at its preceding sessions.[5] Consequently, the present document will look primarily at the impact of these changes on shippers, particularly those of developing countries. These shippers are confronted with a liner shipping industry that has adapted principally to the needs of major shipper groups, which they are generally not part of. Nevertheless, a number of advantages have also accrued to smaller shippers of developing countries, particularly with regard to rate developments. On the other hand, the new situation in the liner shipping markets is considerably more complex and complicated than at times of break bulk shipping and conference domination. Shippers are confronted with a wide choice of shipping opportunities, a choice which they can only benefit from effectively if they have a high level of expertise, knowledge and information.

7. Consequently, the opportunities offered by liner shipping can work both to the advantage and to the disadvantage of the individual shipper. Shippers

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[3] The activities of transnational corporations have an important impact on the world economy and on the economies of many developing countries. Thus, according to a recent United Nations report, "the 1980s have witnessed major changes in the world production system, with TNCs being the principal forces shaping the future of technological innovation." See Transnational Corporations in World Development - Trends and Prospects, United Nations Centre on Transnational Corporations, 1988.

[4] See UNCTAD, "Industry and policy developments in world shipping and their impact on developing countries" (TD/B/CN.4/5), Geneva, 1992.

[5] See in particular UNCTAD, "Industry and policy developments in world shipping and their impact on developing countries" (TD/B/CN.4/5), Geneva, 1992, and UNCTAD, "Progressive liberalization and the development of shipping services in developing countries" (TD/B/CN.4/34), Geneva, 1994.

may find that preferential trading arrangements which may be based on colonial practices or subsequent intergovernmental cooperation agreements with developed countries are much less important under present arrangements than they were in the past. Customs advantages are gradually eroding, particularly in view of the successful conclusion of the Uruguay Round. Additionally, exporters from developing countries are facing trading houses and industrial importers that have instant access to any available trade-related information and the consequent ability to switch between suppliers.

8. The situation which is reflected in the new relationship between partners in trade makes demand for developing countries' exports more vulnerable than ever before. Trade success or failure can no longer be attributed exclusively to export pricing but is more and more dependent on the ability of suppliers from developing countries to comply with business and trading practices of the developed countries, including transport requirements and practices such as just-in-time deliveries or zero-fault supplies.

9. For many exporters of developing countries, this exposure to market forces and international competition without the protective umbrella of preferential treatment is difficult to withstand. In order to enable traders to cope with the newly emerging transport situation, a certain level of assistance will be required, particularly for small and medium-sized companies that, individually, do not have the resources to absorb technological changes rapidly. Such assistance could sensibly be rendered by shippers' councils, provided they can be transformed into professional, service-oriented organizations able to adapt to rapidly changing transport and trade requirements. The necessary process of transformation that would overcome the public service attitude still prevailing in many councils would require a new approach to shippers' councils with regard to both their functions and their organization. Only then could councils still be expected to contribute to the long-term harmonious development of shipper-carrier relations and enhance the ability of traders to take full advantage of the shipping and transport opportunities available to them.

## Chapter II

## THE ROLE OF SHIPPERS' COUNCILS IN A CHANGING TRANSPORT ENVIRONMENT

10. The concept of a shippers' council, its functions, its organization and its place within the maritime sector of a country are of European origin. The job of traditional shippers' councils as they developed in the 1950s and 1960s is to intervene, on behalf of foreign trade operators, principally exporters, with the liner conferences. This is an important conceptual aspect, as this traditional function highlights the difference between shippers' councils and industry organizations in general. The councils' focus has been on the relationship between buyers and sellers of shipping services, rather than government lobbying. Today, however, a process has started again in developed countries whereby councils are starting to shift the emphasis towards providing inputs into political processes and acting as lobbying groups.[6]

11. In relation to present times and to the reality of developing countries, there are several important observations to be made regarding this historical perspective. Shippers' councils were established to deal with conferences and their cartel-like structures and powers. An unprecedented erosion of conference power has taken place in the last two decades, however. Non-conference competition, the introduction of containerization and multimodal transport, globalization of production processes as well as the formulation and implementation of national and international shipping policies have had a lasting impact on shipowner/shipper relationships. It is clear that shippers' councils must react to these developments if they wish to continue to play a role in shaping shipper/carrier relations.

12. The traditional role of shippers' councils in negotiating freight rates with conferences has long been considered as synonymous with the idea of protecting shippers' interests. However, the eroding importance of the conference system and the continuing pressure of non-conference competition have resulted in a large-scale breakdown of conference rate structures. More and more, shippers are negotiating rates directly with lines, including conference lines. When this occurs, the conference tariff is nothing more than a base for negotiations; it ceases to be a fixed price list.

13. The general decline in the importance of conferences does not necessarily imply a demise of cooperative arrangements among shipping lines. New types of agreements have emerged with similar features but which are generally more flexible than traditional conference structures. They range from fairly tightly knit consortia that may exist either within or outside the scope of conferences to trade-wide stabilization agreements as reflected in the Trans Atlantic Agreement (TAA) or the Europe-Asia Trade Agreement (EATA). At the same time, shippers appear to be less concerned about the existence of conference structures as such and the need to build countervailing power than about the more general necessity to reduce transaction costs, including, but not limited to, those of transport operations. In this context shippers feel particularly affected by the recent moves of carriers in specific trades that aim at reducing competition and thereby increasing price levels, as is the case with the above-mentioned TAA and EATA.

14. Additionally, shippers' councils have to react to the rapid development of multimodal transport and extend their activities to include modes of transport other than sea transport, as well as transfer operations and auxiliary services. Shipping itself, due to technological advance and increasing competition, is presently offering high-quality services at relatively low prices. However, while ocean freight rates have, even in real terms, often declined over the last years, connecting port costs and inland transport rates have not necessarily followed suit. The result of this development is that the portion of sea

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[6] See Sletmo, G. and Holste, S., "Shippers' councils: role and responsibility - a Western view", in Maritime Policy and Management, Vol. 21, 1994, No. 4, pp. 257-271.

transport costs in door-to-door rates is declining. Given this development, it is obvious that efforts by shippers' councils to reduce overall transport costs will have to be increasingly geared to costs that are not directly linked to ocean transport services. In doing so they should not, however, lose sight of the importance of total freight cost, including ocean freight, in determining the competitive position of a shipper in any given export market, even at times of declining absolute levels of freight rates. Developing countries' traders tend to act as price takers in their export markets. In such a situation, any rate differentials relative to their competitors will have a direct impact on their FOB returns and, consequently, on profit margins.

15. The spread of containerization and multimodal transport to developing countries is forcing foreign trade operators, and consequently shippers' councils, to look beyond pure ocean transport services to land transport and auxiliary services also. This is the more so as, in most developing countries, inland transport tends to become less efficient and less comprehensive the further one moves inland from the coast. Associated with the technical and physical problems of the structure and quality of the transport links is the economic problem posed by the frequent lack of competition in inland transport services.

16. Moreover, multimodal transport requires the availability of information and communication systems of a certain quality to organize transport operations effectively. Developments in communications and information technologies and networks have to some extent increased the technology gap between the two ends of the trade. While developed countries have moved into electronic data interchange (EDI), many developing countries' shippers and transport operators are still struggling with substandard telephone and telex services and a lack of facsimile transmission equipment. Box 1 provides some information on the concept and technologies of EDI and its use in different parts of the world.

17. These developments may create difficulties for most developing country shippers, who may feel uncertain of their ability to deal directly with lines without the protection of a conference rate schedule to which all owners and shippers adhere. The traditional conference system had provided them with relative security, with transport costs as a fixed element in their total cost calculations. In today's situation, this cost element has become more variable and thus a decisive factor in determining competitiveness in overseas markets. In such a situation, the comparative disadvantage of a small or medium-sized shipper is clear.[7] As he cannot afford to maintain under-utilized shipping departments he is, consequently, often not in a position either to organize the transport of his trade or even to judge the soundness of transport proposals made to him. His negotiating position *vis-à-vis* carriers or freight forwarders is correspondingly weak. It is here that direct assistance from the council is essential to make sure that the best transport alternatives in terms of price and quality required are being made available to the shipper. Consultations and negotiations with conferences remain important issues, but any council restricting its services to such questions may lose its *raison d'être* sooner or later.

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[7] The notion of "small" shippers as it appears in the context of this document is not necessarily one that refers to the absolute size of a company but rather to its presence in well-defined markets and its experience in dealing with the specificities thereof. This relates particularly to transport and shipping arrangements, which can differ considerably from one trade route (market) to another.

Box 1

Electronic data interchange (EDI)

In the course of an international trade transaction, a large number of parties have to produce, check, transfer, receive, process and file hundreds of information elements relating to the goods, their transport and their payment. Such information transfer, traditionally carried out by filling in and transmitting paper documents, is slow, error-prone, and costly. With the proliferation of computers and the use of tele-transmission techniques, it became possible to rationalize the processing and transmission of information. This is normally called "electronic data interchange", or simply EDI. EDI is generally defined as: *"the computer-to-computer transfer of commercial and administrative transactions using an agreed standard to structure the data pertaining to that transaction"*.

The concept of EDI is now being introduced in all developed countries where a number of systems have been created, linking branches of the same company, counterparts in the same industry (e.g. banks, airlines) or small groups of operational partners (e.g. Customs and freight forwarders, Customs and airlines, container operators and sea carriers, etc.). In developing countries, most progress in this field has been made in South-East Asia, but developments around the world are becoming increasingly pronounced.

The most commonly quoted advantages of EDI are as follows:

* EDI saves on clerical costs by avoiding re-entry of data and allows timely and error-free transaction information to be passed from one computer to another;
* EDI allows quicker and safer processing of invoices to bring speedy payment and thus improves cash flows;
* EDI facilitates and speeds up border controls and other official interventions, such as Customs clearance of goods; at the same time, computer-oriented controls improve the efficiency of the controlling authorities;
* As a whole, EDI is a new way of doing business and improving customer service. EDI is becoming an indispensable feature in production and trade, whether domestic or international.

Initially, two variable EDI standards existed:

(i) One for use in Europe, the United Nations Economic Commission for Europe (ECE) Guidelines for Trade Data Interchange (UN/ECE GTDI); and
(ii) One for use in North America, the American National Standards Institute Accredited Standards Committee X12 (ANSI ASC X12).

The creation of a "community system" centred on a port is often the first step in launching EDI. Partners in such a system would be, at the beginning, the container terminal, the shippers and consignees, banks, insurance companies, Customs Authorities, etc.

Within such a community, in effect a computerized "island", the interchange partners can agree on a common format for the codes to be used, the message structure, the technique for error correction, etc. Only one "interchange protocol" is needed to lay down the interchange rules. Even in the absence of a common "language", the conversion from in-house data structure to the format required for the interface with the partner's computer does not cause problems if the number of partners remains limited.

However, once the system functions in one place or "island", it can be extended to connect with other places or "islands", and it is here that such conversions become more difficult and costly as the number of partners using different standards increases. In the absence of a unique "language", partners may be unable to communicate without having recourse to expensive third party services, clearing houses or other value added networks for the multiple conversions required.

In due course partners in one country will wish to communicate electronically with their trading partners in another country, but as the flow of data which accompanies the goods from the manufacturer's premises to the final buyer's place passes from one computer to another, from one "computerized island" in one country to another "computerized island" in another country, there may be a need for a common universal "language" which will permit end-to-end information transfer irrespective of the type of computer and the type of communication used.

Source: Multimodal Transport Handbook, UNCTAD/UNDP, Trainmar, Geneva, 2/1992.

18. The need to adapt shippers' representation to changing transport realities is, of course, not limited to councils in developing countries, but equally applies to those of developed countries. Even though the needs of developing countries' shippers may differ from those of their European and Australian counterparts for example, it might still be useful to refer to some reflections on the future of the European Shippers' Council (ESC) and its recent restructuring. The need to provide for integrated logistical solutions and their impact on the competitiveness of trading companies has been at the root of the reorganization and reorientation of Council work. Consequently, at the end of 1992, members of the European Shippers' Council founded the European Inland Transport Users' Council (EITU), concerned with issues relating to land and multimodal transport and the European Council of Transport Users (ECTU), which is designated to represent shippers' views on transport policy decisions, particularly *vis-à-vis* the institutions of the European Union. It is thus clear that the ESC has changed direction, with its role increasingly geared to that of a shippers' lobby. This changing role is also underlined by the move of the general secretariat from Zoetermeer (the Netherlands) to Brussels.

19. While European shippers clearly see the need to make their views on policy issues known to the relevant authorities, they apparently also feel the need to maintain discussions with shipowners, even though formal consultations are negligible for the time being.[8] With regard to sea transport, major activities no longer concentrate on freight rate negotiations, which are considered secondary given the reduced importance of conferences and conference tariffs. Major concerns of European shippers relate, *inter alia*, to agreements among carriers to restrict capacities, the imposition of freight adjustment factors and the persisting discrepancy between tariffs and market prices. The latter two issues are both connected with deficient transparency of transport markets, which shippers want to see improved. The achievement of greater transparency would benefit mainly medium-sized and smaller shippers and in turn would enhance the role of the shippers' organization. This particular element of the work of shippers' councils is also of critical importance for developing countries, as it touches upon the ability of the national economy to diversify foreign trade, as reflected in the need to provide direct assistance to shippers on their specific transport problems.

20. The situation in Europe is characterized by the absence of a legislative framework relating to the establishment or functioning of shippers' councils. The predominance of councils in European countries is rather based on a long tradition of trade and industry organizations built on cooperation and solidarity. In other countries, including developing ones, the situation is quite different, with councils established on the basis of national legislation, either specifically relating to shippers' councils or as part of more embracing legislation on the application of principles and rules of competition to liner shipping. Thus, the recognition of the need to maintain an effective representation of shippers *vis-à-vis* carriers has been a long-standing feature of Australian maritime policy. Part X of the Trade Practices Act of 1974 empowers exporters and producers of exports to act together in negotiations with liner conferences, principally through the Australian Peak Shippers Association.[9] Functional and organizational characteristics of Australian shipper bodies are described in Box 2.

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[8] See Dean, J., "Shippers' perspective", in Shippers' Times, Vol. 13, No. 3/93, pp. 8-11.

[9] See also UNCTAD, "Progressive liberalization and the development of shipping services in developing countries - country experience" (UNCTAD/SDD/SHIP/5), Geneva, 1995.

Box 2

Shippers' bodies - the case of Australia

Part X of the Trade Practices Act (TPA) allows exporters and producers of exports to act in concert in negotiations with conferences and non-conference lines via a designated shipper body. The objective is to try to offset any market power which conferences and non-conference lines may have.

Many Australian export shippers belong to the Australian Peak Shippers' Association (APSA), which is the Designated Peak Shipper Body (DPSB) under Part X, either directly or as a member of a state-based or commodity-based shipper body. These latter shipper bodies may be accorded, under Part X, the status of Designated Secondary Shipper Bodies (DSSBs). At 30 June 1993, APSA had 24 members, 12 of which were DSSBs. APSA's members represent some 85 per cent of the volume of liner cargo exported from Australia.

*The role and power of the Designated Peak Shipper Body*

In support of APSA's role in representing the interests of Australian shippers generally in relation to outward liner shipping, Part X (s.10.03 and s.10.24) gives APSA exemptions from certain sections of the TPA for the purposes of negotiations and agreements (including loyalty agreements) with conferences and other ocean carriers. The exemptions related to s.45 (contracts, arrangements or understandings restricting dealings or affecting competition) and s.47 (exclusive dealing).

Since its formation in 1990, APSA's major role has been the negotiation of minimum service levels, covering such issues as minimum capacity to be provided, service frequency, the ports of loading and discharge which are to be serviced, the terms and conditions of bills of lading, and freight rate charges. APSA is able, under Part X (s.10.29), to require the parties to a provisionally registered conference agreement to negotiate minimum service levels and to provide APSA with any information that is reasonably necessary for these negotiations. The results of these negotiations flow on to all export shippers.

The parties to a registered conference agreement are required to provide 30 days' advance notice to APSA of changes to negotiable shipping arrangements and to negotiate regarding these arrangements, and wherever reasonably requested by APSA provide to APSA, upon request, any information that is reasonably necessary for these negotiations.

APSA (or other affected persons or bodies) may request an investigation of whether the parties to a registered conference agreement have met the obligations imposed on them. The request may be made initially to the Minister for Transport and Communications for consideration of a referral to the Trade Practices Commission (TPC) (s.10.47), or directly to the TPC, under s.10.48. A recent example of such a request, after negotiations had failed, resulted in the TPC investigation into terminal handling charges in the North American trades. Similar provisions apply, under s.10.52 and s.10.58, with respect to registered ocean carriers with substantial market power.

*The role and powers of Designated Secondary Shipper Bodies*

Designated Secondary Shipper Bodies represent the interests of Australian shippers in particular trades, commodities or regions, or those of producers of exports in relation to outward liner shipping services. DSSBs are primarily concerned with negotiating service contracts, particularly in respect of freight rates, with conferences and independent lines.

If a DSSB is nominated by the Registrar of Liner Shipping, the DSSB can assume similar powers and obligations to those of APSA. At 30 June 1993, there were 13 DSSBs, of which 12 were members of APSA, such as: Dairy Industry Shipping Association, Australian Dried Fruit Shippers' Association, etc.

Source: Liner Shipping - Cargoes and Conferences, Report of the Part X Review Panel, Australian Government Publishing Service, Canberra 1993, pp. 19-21.

21. Similarly, the Government of Thailand is reported to be in the process of drafting legislation aimed, *inter alia*, at improving the negotiating power of the national shippers' council *vis-à-vis* conferences serving the country's foreign trade. Under the proposed Maritime Business Act, conferences will have to file export tariffs and give the council 90 days' notice of intended increases in freight rates or freight additionals.[10] This new draft legislation thus addresses some of the continuing difficulties faced by shippers in their dealings with liner conferences, i.e. the apparent lack of willingness of some of them to enter into meaningful consultations on freight rates and surcharges, including the long-standing dispute over terminal handling charges (THC).

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[10] See "Thailand acts to protect shippers", in Containerisation International, August 1994, p. 18.

## Chapter III

## THE FUNCTIONING AND ORGANIZATIONAL STRUCTURES OF SHIPPERS' COUNCILS AS MODERN, SERVICE-ORIENTED ORGANIZATIONS

### 1. The tasks of a modern shippers' council

22. Given the present situation of transport for the foreign trade of developing countries, a shippers' council in these countries should fulfil the following functions:

- Assure negotiations with ocean carriers on all matters of concern to shippers;
- Provide information to shippers on costs and conditions of all modes of transport. This includes all relevant information on auxiliary services;
- Provide direct assistance to shippers, particularly to small and medium-sized ones, regarding the shipment of particular consignments;
- Undertake research on a continuing basis into questions of importance for the protection of the interest of transport users, the effective application of relevant transport policy and the economic conditions of using different transport routes and modes;
- Represent the interests of the trading community *vis-à-vis* transporters and *vis-à-vis* Governments in their formulation and implementation of shipping and transport policy measures;
- Serve as the platform to voice users' needs and demands *vis-à-vis* the transport industry and *vis-à-vis* the Government. Only a profound knowledge of customers' needs will encourage the local transport industry to change existing patterns and offer new services adapted to the needs of the shippers. Similarly, the Government needs to be aware of the actual problems and needs of shippers in order to formulate an appropriate transport policy. In this context, the council will play the role of both a shippers' "lobby" and a consultative body for the national authorities. It may thus be assured that in all transport policy decisions a fair balance is struck between the potentially conflicting interests of transport providers and users. The role of the council is to rigorously foster the interest of shippers, and it is up to the Government, not the council, to pursue a policy that would reconcile the just mentioned different interests of users and suppliers of shipping services.

23. The dual role of a modern shippers' council as intermediary between shippers' and carriers' organizations and as a lobbying group, as referred to above,[11] is clearly reflected in these functions. Equally, a council's role and functions are not static, but have to react dynamically to changes in shipping, transport and trading patterns.

24. In many developing countries, shippers' councils were created in the 1970s and 1980s as public institutions, not only taking up negotiating functions with liner conferences, but also being entrusted with implementing shipping policy decisions of Governments. At the time the councils were created, there appeared to be a certain logic in this approach, as the shippers' community was basically comprised of public enterprises. Additionally, Governments felt that the two elements of their shipping policy, i.e. development of a merchant marine and protection of shippers' interest, were so closely interrelated that they could be pursued at the same time by a single agency. The shortcomings of this approach, however, soon became apparent. The primary focus of the councils' work on the relationship between buyers and sellers of transport services leaves little room for considerations of ownership patterns on either of the two sides. Secondly, the extension of council activities to include the aspect of lobbying is not compatible with the public service approach chosen. In fact, once the council is entrusted with typically administrative functions, the shippers are deprived of an important institution that should clearly see its role in defending specific interests. The representation of the shippers' community

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[11] See para. 10 above.

*vis-à-vis* the Government and the administration cannot sensibly be accomplished if the council itself is part of that same administration.

25. In a number of countries - and this is closely linked to the just mentioned public-service approach to shippers' councils - the councils have consequently been entrusted with functions that would normally be alien to their proper role. The most criticised example of this is the implementation of provisions on participation in trade of national shipping lines. Based on often rigid national cargo sharing or cargo reservation provisions, councils manage "*a priori* sharing schemes" for conference or liner cargoes. Mounting criticism by shippers, as well as external pressures, have clearly revealed the dilemma that a number of councils find themselves in. Shippers' councils and consequently shippers and consumers have been pushed into the role of supporting not only ailing national shipping lines, but also foreign lines, in particular conference lines. This approach is predominant among African shippers' councils and at the root of some of the problems faced by them today. Even if these councils unconditionally accept the necessary separation of the protection of shippers' interest and promotion of the national fleet (or regulation of liner shipping activities), implementation is still problematic, as can be seen from the difficulties a number of African councils face in their approach to restructuring. However, Governments themselves often lack the necessary administrative infrastructure to ensure implementation of policies, rather than entrusting such implementation to the shippers' councils. Moreover, the councils have not been reluctant to take over these functions, as they assure a large part of their operating budget and have fostered their growth in a number of countries.

26. The important question today is whether these councils will in future be able to defend the interests of their shipper members effectively, given the increasing complexities of shipping and related transport as well as the level of competition that national export goods and commodities are facing in foreign markets. In order for the answer to be affirmative, restructuring of the councils appears indispensable. They should concentrate their work on the solution of practical transport problems facing shippers and discard all functions that are not directly related to the primary objective.

27. The list of functions referred to above[12] is indicative of this approach. A number of councils in all developing regions are embarking on programmes to redefine their activities and thus attempt to better respond to the requirements of their member shippers. This responsiveness is of the utmost importance and also at the root of possibly divergent developments in different countries, depending on their level of development and the degree of integration of shippers in the global economy. Consequently, it can be expected that councils in developed countries will continue to concentrate further on lobbying functions providing inputs into government policies. In most developing countries there appears to be a continuing need to maintain commercial negotiating functions in the area of rate-making, supplemented by direct assistance to small and medium-sized shippers. The annex contains examples of how shippers' councils in developing countries are trying to cope with these new challenges.

2. <u>The need to adapt organizational structures</u>

28. The new roles and functions of a shippers' council need to be reflected in the organizational arrangements of the council. The basic point of departure should be, as mentioned before, that the council should be a professional rather than a political institution. The question as to what the actual institutional and organizational arrangement will be, e.g. independent association or link-up with existing institutions such as the Chamber of Commerce, has to be decided on a case-by-case basis, depending on the existing institutional infrastructure and its ability to effectively absorb council functions.

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[12] See para. 22 above.

Membership

29. One crucial aspect of shippers' councils relates to membership. While membership could generally be envisaged both for individual companies and for associations, boards, etc., membership of individual companies would probably be more appropriate in most developing countries, where the existence of functioning industrial associations is not the rule. Furthermore, through individual membership, double work can be avoided, the process of information exchange is quicker, immediate direct assistance can be rendered in the case of need and membership fees can be raised according to the means of the individual members. The ownership of the companies would generally not be a criteria for membership. Thus, a council would represent shippers irrespective of whether they are privately or publicly owned. Associations could be invited to join the council as observers. However, the decision about the form of membership must be left to the shippers. On the contrary, members of the transport industry, be they operators, forwarders or agents, should not be eligible for membership in the council.

30. The effectiveness of any negotiating party depends on the "bargaining power" and market presence it represents. In transport, it is the control of cargo volume that is of crucial importance. Generally speaking, therefore, the greater the number of shippers and the greater the volume represented, the more efficient and successful the shippers' council will be.

31. However, in many developing countries, a few large companies/organizations control the foreign trade of the country because of the fact that the country's foreign trade depends on a few export commodities only. These large companies or organizations as a rule have their own specialized transport departments and a vast and positive experience in negotiating with the transport industry because of the bargaining power they represent. If asked to join a shippers' council, enthusiasm is not always great on their side because of their fear of a possible loss of power and freedom when negotiating with the transport industry. Such lack of enthusiasm may well be based on a misunderstanding of the functions of a shippers' council. In terms of negotiations on freight rates, the council negotiates the level of general freight rates and not of specific commodity rates. Thus, while participation of large shippers in the council does give weight to the negotiating position of the council, it in no way affects the possibilities for the shipper to negotiate specific commodity rates relevant to him. In fact it may also benefit him, as the general level of freight rates tends to be the point of reference for all subsequent negotiations on specific commodity rates. Furthermore, the fact that the activities of the national shippers' council extend beyond freight rate negotiations particularly benefits large shippers. The shippers' council also provides them with a forum to protect their specific interests *vis-à-vis* government or regulatory agencies, as well as parastatal institutions active in transport and related matters. As an example of this, one may cite assistance in solving problems with customs clearance of goods, treatment of cargo in ports, etc.

32. Experience shows that, in principle, shippers are prepared to finance a council provided they are convinced of its benefits, i.e. of a positive cost/benefit ratio. When defining funding principles, it is strongly recommended to set these principles in accordance with the financial possibilities of the individual members. The level of funding should be such as to enable the council to carry out the functions assigned to it and to ensure its financial and operational independence. It should be clear, though, that the professionalization of shippers' councils and the reorientation of their work will generally not entail additional funding requirements. In many cases it will actually result in reduced budgets, as functions not considered to be of a priority nature by the members can be reduced or even discarded.

33. Actual funding requirements and consequently also funding modalities cannot be established in a general way but have to be considered on a case-by-case basis. They will depend on the functions actually carried out and on the organizational integration with other federations, such as Chambers of Commerce or Industry Associations, and - most importantly - with the members themselves.

Active participation in council work, particularly by large shippers, represents an important contribution both to the professionalization of councils and to reducing general funding requirements. Such contributions in kind can include the use of facilities, the provision of staffing support to the secretariat, etc. The latter type of backing is of particular importance, as it equally affects two crucial aspects of council work, i.e. funding and secretariat staffing, some problems of which are referred to below.

34. A well equipped and adequately staffed secretariat is essential to ensure the independence and proper functioning of the council. Qualified staff are the biggest asset of the council and its biggest problem. In principle, two basic options exist to ensure the availability of the talents and qualifications required, i.e. the recruitment of fully qualified staff with corresponding minimum training requirements, or the recruitment of staff with limited qualifications requiring extensive training. Given the fact that shippers require immediate assistance and that the provision thereof demands a certain experience in transport matters, the first option would certainly appear to be preferable, even if it entails higher personnel cost (it is obvious that qualified personnel will have to be paid a competitive salary to ensure the long-term commitment of the staff concerned to the council). The employment of staff with limited competence and lengthy training requirements could unduly delay the operational functioning of the council and frustrate its members.

35. This, however, does not exclude ad hoc training efforts which are aimed not primarily at providing staff with basic transport knowledge but rather at keeping them abreast of new transport developments - be they commercial, organizational, physical or administrative - that are relevant for the trading community.

## Annex

## INFORMATION RECEIVED FROM SHIPPERS' COUNCILS OF THE PHILIPPINES, SENEGAL AND SRI LANKA ON CHANGES IN SHIPPER/CARRIER RELATIONS

### A. Philippines Shippers' Bureau

#### 1. Changes in shippers' transport requirements

1. Shippers are gradually shifting their transport requirements, and instead of directly engaging the services of shipping lines (actual carriers) they are turning to freight forwarders (consolidators/NVOCCs) due to the following factors:

1. The emergence of professional freight forwarders acting as consolidators/NVOCCs;

2. The total package of services that a professional freight forwarder is able to provide; and

3. The lump sum and/or competitive rate that a professional freight forwarder is able to offer.

#### 2. Consequent changes in shippers' council tasks and/or organizational structure

2. The Philippines Shippers' Council was converted by law into a regular bureau under the Department of Trade and Industry in March 1992. It is now called the Philippines Shippers' Bureau (PSB) performing functions designed to promote and protect the interests of both domestic inter-island and international shippers (exporters). Two main functions were added for implementation by the Bureau, viz: registration and accreditation of freight forwarders; and mediation and arbitration of disputes between shippers and shipping lines and between the said members and non-members.

3. The registration and accreditation of freight forwarders have been institutionalized with the aim of professionalizing the industry; implementation is quite successful, with a total of 228 accredited firms to date. The mediation and arbitration function will soon be institutionalized considering the importance of this function in resolving shippers' problems.

4. Furthermore, the PSB has become more proactive with the deregulation of the domestic shipping industry. The Bureau has organized regional shippers' associations (RSAs) to provide for a forum in which shippers in the regional outports can collectively deal and/or negotiate directly with individual domestic shipping lines and/or the domestic shipping conference. The Bureau serves as the Technical Service arm of the RSAs. Establishment of the institutional linkage with the domestic shipping conference, coupled with the institutionalization of the consultation/negotiation machinery, is the next step towards strengthening the RSAs.

#### 3. Other issues

5. The unilateral imposition of ocean freight and surcharges by international shipping lines has remained a controversial issue which Philippine exporters (shippers) are perennially confronted with. The issue of terminal handling charges (THCs) has made the freight tariff more confusing than before. Shippers are contending that, with the THC, there is double charging which is actually a surcharge without basis. These THCs imposed by liner conferences lack transparency, as increases are frequent and quanta quite high, and yet shippers are not consulted before they are imposed.

## B. Senegalese Shippers' Council

### 1. Changes in shippers' transport requirements

6. Over the past decade, five liner conferences controlled the largest part of maritime commerce of West Africa, including Senegal:

- COWAC (Continent/West Africa Conference)
- MEWAC (Mediterranean/West Africa Conference)
- UKWAL (United Kingdom/West Africa Lines/Joint Service)
- FEWAC (Far East/West Africa Conference)
- AWAFC (American/West Africa Freight Conference).

7. The annual meetings between shippers and these different liner conferences have resulted in a stabilization of freight rates, which had increased between 17 and 35 per cent in the decade from 1975 to 1985.

8. As a result, demands for freight rate increases could be curbed and increases fixed according to agreements between the parties concerned at levels between 6 and 10 per cent depending on the trade.

9. The institutionalization of freight rate negotiations by means of the creation of the Union of African Shippers' Councils (UASC) has resulted in a genuine restraint on freight rate increases. Since 1986, maritime freight rates have been frozen, which, in real terms, signifies a reduction in freight costs.

10. In the case of Senegal, the intervention of the shippers' council was not limited to negotiations of general freight rate levels with liner conferences. Consequently, whenever a local export product faced difficulties, the shippers' council intervened with the shipowners in order to obtain promotional or preferential freight rates.

11. At this stage, it is important to recall that from 1975 to 1985, the major preoccupation of shippers was to obtain the most reasonable and stable freight rates possible from powerful conference organizations, be it with regard to basic rates or to surcharges such as baf, caf and other surcharges, the control and monitoring of which had proven problematic. Other needs of shippers essentially concerned assistance in the area of:

- Advice and studies on maritime transport;
- Management training concerning legal aspects and logistics of maritime transport;
- Information on freight rates, service frequency and quality and conditions prevailing in ports.

12. The question of freight rates, which seemed to be the major preoccupation of shippers in the past decade, continues to be of importance today but is no longer a priority issue.

13. The disappearance of major liner conferences, the establishment of a more competitive maritime transport market and, above all, the establishment of mega-carriers seem to be the principal reasons for this development.

14. Apart from the requirements mentioned above, shippers today certainly require specific and direct assistance in the shape of legal information and information on administrative procedures and inland haulage logistics.

### 2. Changes in maritime transport structures

15. Changes in developments observed in other regions of the world are increasingly affecting the transport sector of the subregion, with consequences that include:

- The disappearance of major liner conferences, opening the door for mega-carriers. In this context it is worthwhile to note the

discontinuation of all liner conferences serving the trade with Europe, in particular COWAC and MEWAC;
- The widespread use of slot and space chartering arrangements by the different shipping lines on a reciprocal basis;
- The tendency to realize economies of scale through the use of hub ports from which the shipping lines feeder cargoes to the other ports;
- The systematic implementation of non-uniform tariffs based on the types of vessels and inland transport equipment of each shipping company and their strategies with regard to pricing or market penetration.

3. Resulting changes at the level of the Senegalese Shippers' Council (COSEC)

16. Bearing in mind the present situation and the developments resulting therefrom, the Government of Senegal, in close concertation with shippers, has proceeded with the updating of the institutional and organizational framework of COSEC.

17. Thus, the following changes have been made with regard to COSEC on the basis of Decree No. 94.606 of 9 June 1994:

- COSEC remains a public institution of a professional character, of which all shippers are members;
- On the Board of Administrators, the executive organ, private shippers have a majority of 9 out of 12 members. They are elected by the General Assembly of Shippers, and not by the State as used to be the case in the past;
- The functions and objectives have been adapted to reflect the new environment of maritime transport.

18. As a result, the activities, work programme, allocation of resources and investments by COSEC will from now on be decided by shippers, principally on the basis of established requirements.

4. Other developments affecting shipper-carrier relations

19. The development that has had the most lasting impact on relations between shippers and shipowners in the region is based on the weakening of the conference system, as a result of which relations with shipping lines that used to be institutionalized in the framework of Notes of Understanding or cooperation agreements have become inoperative or obsolete.

20. Thus, it is of increased importance to develop direct links with shipping lines or groups of shipping lines to find solutions to specific problems of an economic or logistical nature or simply freight rates.

21. It is clear that it is increasingly important to approach problems in a differentiated and selective manner, rather than maintaining general agreements with shipping operators as was formerly the case. Thus, the necessity to systematically develop close and direct assistance for individual shippers and commodity-based shipper groups will probably determine the Council's work in the future.

## C. Sri Lanka Shippers' Council

22. The following review of the change in shippers' requirements will be in the context of the last 10 years.

23. The trading pattern in Sri Lanka, like that of many developing countries, has changed rapidly from a high ratio of traditional exports of agricultural commodities (tea, rubber, coconuts, spices) towards labour-intensive, low-technology industrial and manufactured items such as garments.

24. The liberalization of the economy and the relaxation of import restrictions have led to a large growth of imports. A large part of the imports have been essential goods and capital goods (fuel/machinery). However, the growth of imports has also been fuelled by a rapidly growing service sector and the need for industrial raw material inputs for manufactured items for re-export.

25. The United States has long been the single largest trading partner. Export markets on the whole, however, have changed. The Middle East has been replaced by Europe as the leading export market due to these markets changing their sources of tea imports. More significantly, sourcing of imports, particularly of capital goods, has changed drastically from Europe to Japan, Hong Kong, the Republic of Korea, Taiwan Province of China and Singapore.

26. The growth of trade with various non-traditional markets has led to a geometric expansion of demand for shipping to various destinations, not all of which could be supplied by the traditional shipping lines. In addition, air cargo transport for high-value items such as designer garments and electronics has been a significant development.

27. However, since the Port of Colombo is a major transhipment port and often the last port of call for ships travelling from the Pacific Rim to Europe, shipping opportunities to the commercial hubs of Europe and East Asia have not been scarce for Sri Lankan shippers. However, intra-regional shipping opportunities have been limited.

### Shipping market and transport structure

28. The liberalization of shipping in 1991 led to an increased number of callings at Colombo and an associated drop in freight rates. It drastically altered the balance in favour of the shipper.

29. The liberalization of shipping also led to the emergence of non-vessel-operating common carriers (NVOCCs), who have made a significant contribution to the growth of trade by small and medium-sized shippers.

30. However the liberalization process has left a regulatory vacuum. The Council, together with the Central Freight Bureau and the Sri Lanka Freight Forwarders Association, has lobbied the Ministry of Ports and Shipping for the establishment of a regulatory framework for the operation of NVOCCs.

31. The growth of NVOCCs was anticipated by a growth in the number of small and medium-sized shippers and the penetration of new markets. Shippers have increasingly opted to use freight forwarders or NVOCCs rather than handle the shipping activity themselves. It has been estimated that approximately 65 per cent of shippers use the services of forwarders to handle their transport activity.

32. The rapid growth of export manufactures has led to the increased complexity of trade transactions. Taking garments as an example, a transaction could include the Buyer, an independent buying office, the manufacturer, his local forwarder, his agent in the importing country, the carrier or carriers, the buyer's forwarder/handling agent, etc.

33. Accordingly, the practice of negotiation with conferences on freight increases, though still a substantial part of the Council's agenda, might be supplanted by activity that will directly look after the shippers' interests.

34. The distancing of the actual shippers from the shipping operation and the emergence of the freight forwarder/NVOCC to the fore of the operation has diluted the traditional definition of shipper.

35. The Council has traditionally drawn resources from members. However, the distancing of the shipper from shipping operations might possibly lead to a loss of this resource. Currently freight forwarders have an intimate knowledge of the cost structures of shipping lines, putting them in a useful position when negotiating on freight rates. The Council might eventually rely more on forwarders' knowledge to negotiate with lines and conferences.

36. The Council has the added complexity of including the national forwarders' association - the Sri Lanka Freight Forwarders' Association - within its membership.

Tasks for the Shippers' Council

37. The Council will, for the future, need to redefine the activity of shipping and consequently that of the shipper in the light of the above.

38. The Council will also have to identify what interests it represents and needs to protect and promote in the rapidly changing relationships in the structure of shipping.

39. With the increased flexibility of transport options, the Council will have to build expertise in different areas to serve its members, as well as follow new initiatives in training.